

**FILED**

**MAY 19 2004**

CLERK'S OFFICE  
U. S. DISTRICT COURT  
EASTERN MICHIGAN

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

28 Pgs  
Attach 1  
**ORIGINAL  
RECEIVED**

**MAY 19 2004**

CLERK'S OFFICE, DETROIT-PSG  
U.S. DISTRICT COURT

**04-71879**

UNITED STATES OF AMERICA,

Plaintiff,

v.

OLD KENT FINANCIAL CORPORATION  
AND OLD KENT BANK,  
through their Successors  
in Interest,

Defendants.

ARTHUR J. TARNOW

MAGISTRATE JUDGE VIRGINIA M. MORGAN

**SETTLEMENT AGREEMENT**

**I. INTRODUCTION**

This Agreement is hereby submitted jointly by the parties to resolve claims of the United States that defendants, Old Kent Financial Corporation and Old Kent Bank (collectively "Old Kent" or "the Bank"), violated Title VIII of the Civil Rights Act of 1968 ("Fair Housing Act"), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619, and the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. §§ 1691-1691f, by discriminating on the basis of race in the marketing, solicitation and extension of credit for business and residential real estate-related loans. The United States alleges that the Bank denied equal credit opportunity to persons and businesses in predominately African-American

**FILED**  
04 MAY 19 AM 10:08  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
DETROIT

neighborhoods in the City of Detroit, primarily by avoiding and declining to provide loan services based upon the racial identity of the geographic area they were located in, a practice commonly referred to as redlining.

The United States began this investigation into the lending practices of the Bank in February 2000. Fifth Third Bancorp ("Fifth Third") acquired Old Kent Financial Corporation through an acquisition approved by the Federal Reserve Board on March 12, 2001. As a result of this acquisition, Fifth Third merged Old Kent Bank into Fifth Third Bank (Michigan), a merger approved by the Federal Reserve Board on May 14, 2001. Fifth Third and Fifth Third Bank (Michigan) are successors in interest to all assets and liabilities of Old Kent Financial Corporation and Old Kent Bank.

The Bank denies that it engaged in race discrimination in its marketing, solicitation or extension of credit, or that any act or omission on its part as alleged in the United States' Complaint or this Agreement violated the FHA or the ECOA. Nevertheless, because the Bank's successors in interest share the United States' interest in providing for the credit needs of all businesses and individuals in the City of Detroit, they voluntarily consent to the entry of this Agreement. Moreover, through the agreements articulated in this Agreement, Fifth Third affirms its commitment to be an industry leader in lending in the City of Detroit.

There has been no factual finding or adjudication with respect to any matter alleged by the United States. Accordingly, the entry of this Agreement is not, and is not to be considered, an admission or finding of any violation of the FHA or the ECOA by the Bank. Rather, the parties have entered into this Agreement to expeditiously and voluntarily resolve the claims asserted by the United States in order to avoid the risks and burdens of litigation.

## II. SUMMARY OF THE UNITED STATES' ALLEGATIONS

Prior to its acquisition by Fifth Third, Old Kent Financial Corporation was a bank holding company, which was incorporated under the laws of Michigan in 1984, and was headquartered in Grand Rapids, Michigan. Old Kent Bank, which was established in 1853, was also incorporated under the laws of Michigan and headquartered in Grand Rapids. Old Kent Bank was a wholly owned subsidiary and principal asset of Old Kent Financial Corporation at the time that Old Kent Financial Corporation was acquired by Fifth Third. As of December 31, 2000, Old Kent Financial Corporation estimated its total assets at \$23.9 billion, with Old Kent Bank maintaining an estimated \$23.5 billion of those assets.

Prior to 1995, Old Kent Financial Corporation maintained a corporate structure that included numerous subsidiary banks, including Old Kent Bank. In 1995, Old Kent Financial Corporation consolidated its subsidiary banks into a single bank, Old Kent

Bank, which operated out of Grand Rapids, Michigan. Since Old Kent Bank first began operation in the Detroit MSA, it expanded its business, including extending credit for small business loans and residential real estate-related transactions to substantial portions of the Detroit MSA. The United States alleges that Old Kent Bank, in the course of this expansion, engaged in a race-based pattern of locating or acquiring new offices, and that it located or acquired new branches and other offices to serve the residential lending and credit needs of predominately white areas, and not those of predominately African American neighborhoods in the City of Detroit.

The United States alleges that as of January 1996, Old Kent Bank operated at least 18 branches in the Detroit MSA and that not one of these branches was located in the City of Detroit. The United States contends that as of March 2000, Old Kent Bank had expanded its business presence in the Detroit MSA to include a branch network of at least 53 branches, located in every county of the Detroit MSA. The United States alleges, however, that by March of 2000, Old Kent Bank still did not have a single branch in the City of Detroit, where the population is more than 81% African American.

The Detroit MSA contains the six southeast Michigan counties of Wayne, Oakland, Macomb, Lapeer, St. Clair and Monroe. In the most recent U.S. Census Residential Segregation Index, the Detroit

MSA is identified as one of the two most racially segregated MSAs in the United States. While the African American population of the City of Detroit is over 81%, the African American population of the entire Detroit MSA is approximately 23%, with the majority of non-African American residents residing in the suburban areas surrounding the City of Detroit.

The United States alleges that Old Kent Bank excluded the City of Detroit from its assessment area under the Community Reinvestment Act ("CRA"), 12 U.S.C. §§ 2901-2906. Pursuant to the CRA and its implementing regulation promulgated by the Federal Reserve Board, 12 C.F.R. § 228.41(e), a bank's assessment area must consist only of whole geographies, may not reflect illegal discrimination, and may not arbitrarily exclude low or moderate income geographies, taking into account the institution's size and financial condition. The United States alleges that instead of defining its assessment area in accordance with this regulation, Old Kent Bank excluded the City of Detroit, located in the heart of Wayne County, from its lending area and therefore excluded most of the majority African American neighborhoods in the Detroit MSA.

The United States contends that from at least 1996 through 2000, Old Kent Bank solicited and funded very few small business or residential real estate related loan applications from residents of the City of Detroit. The United States alleges that during this same time period, Old Kent Bank personnel did not solicit

applications from applicants in the City of Detroit to the same degree as from other census tracts in the Detroit MSA.

The United States undertook an analysis of the geographic distribution of the loan originations funded by Old Kent Bank. The United States contends that this analysis showed that Old Kent Bank served the credit needs of the predominately white neighborhoods of the Detroit MSA to a significantly greater extent than it served the credit needs of predominately African American neighborhoods. Specifically, the United States alleges that between 1996 and 2000, Old Kent Bank originated 15,423 small business, home improvement, and home refinance loans in the Detroit MSA and that only 335, or 2.2% of such loans were made in majority African American census tracts.

The U.S. Census reports that in the City of Detroit, over 11,000 (approximately 43%) of the more than 26,000 business are owned by African Americans. The 1997 Economic Census also reports that the African American firms in the Detroit MSA generate over \$3.5 billion in revenue. Yet, the United States alleges, of the 1,496 small business loans generated by Old Kent Bank in 1998, only 20, or 1.3%, were originated in majority African American census tracts. The United States acknowledges that after the announcement of this investigation in March 2000, Old Kent Bank engaged in a concerted effort to improve upon this performance. The United States alleges, however, that by the end of 2000, of the 1,977

small business loans generated by Old Kent Bank that year, only 87, or 4.4%, were originated in majority African American census tracts. The United States contends that during this same time period many banks and other lenders issued loans to persons or businesses residing in the City of Detroit.

The United States contends that the totality of the Bank's policies and practices constitute the unlawful redlining of the City of Detroit because of its racial composition. The United States alleges that these policies and practices have denied an equal opportunity to residents of these predominately African American neighborhoods, based upon the racial composition of these areas, to obtain small business and residential real estate-related financing, in violation of both the FHA and the ECOA.

### III. SUMMARY OF OLD KENT'S RESPONSE

Old Kent through its successors in interest denies the United States' allegations and maintains that at all times it conducted its lending in compliance with the letter and spirit of the fair lending laws and in a non-discriminatory manner.

Old Kent acknowledges that it did not have a substantial banking center presence in the City of Detroit. However, Old Kent contends that it was a relatively small and new market entrant in the Eastern Michigan market, having gradually expanded from its Western Michigan base. Old Kent asserts that the cost of entering a new market through the construction of new bank branches is very

high, and, therefore that Old Kent grew principally by acquiring a number of smaller community banks, which had branches outside of the City of Detroit. Old Kent contends that bank lending in the City of Detroit is dominated by a few large banks who were not suitable acquisition targets for Old Kent.<sup>1</sup>

Old Kent asserts that because it did not have a significant banking center presence in the City of Detroit, it was difficult for it to generate a significant volume of small business lending, particularly because small businesses frequently seek to obtain loans from banks with which they maintain deposit relationships. Old Kent asserts that, nonetheless, Old Kent's loan officers aggressively attempted to develop business from small businesses in the City of Detroit and in majority African American census tracts, and that the Bank was enjoying growing success in that regard.

Old Kent does not acknowledge that, as an organization, its record of residential lending in predominately African American areas within the City of Detroit was in any way deficient. Old Kent asserts that the lending activity of its wholly-owned mortgage lending subsidiary, Old Kent Mortgage Company, should have been taken into account in the United States' analysis. Old Kent asserts that Old Kent Mortgage Company, which Old Kent contends

---

<sup>1</sup>Old Kent asserts that its Assessment Areas were determined in a fair and objective manner, by drawing circles of fixed radius around its branch locations and including all census tracts within those circles.



accounted for nearly 80 percent of Old Kent Financial Corporation's lending in the City of Detroit, was a predominately "prime" lender, making available particularly favorable credit products, including FHA and VA loans, throughout the City of Detroit. Old Kent contends that one of Old Kent Mortgage Company's three origination offices was located in a majority African American census tract in the City of Detroit. Old Kent contends that this origination office made a substantial number of loans within the surrounding community.

In sum, Old Kent asserts that it aggressively sought out business throughout the Detroit MSA.

#### IV. PROACTIVE LENDING INITIATIVES BY FIFTH THIRD

The United States recognizes that Old Kent and now Fifth Third have undertaken initiatives to help meet the credit needs of the residents in majority African American neighborhoods in the Detroit MSA. In 2000, after receiving notice of this investigation, Old Kent opened two branches in majority-African American tracts in the Cities of Pontiac and Detroit. Fifth Third took additional initiatives upon acquiring Old Kent, which resulted in an increase in its proportion of small business lending in the City of Detroit.

For example, in 2001, Fifth Third chose Southfield, Michigan, for its Eastern Michigan headquarters. Southfield is near the Detroit MSA population center, and the office is located in a majority African American census tract. Also, since the Old Kent

acquisition, Fifth Third:

- Has formed a Detroit Business Development Group Team to focus on the extension of small business credit in the Detroit area. This team includes one team lead, who was promoted in November 2002 and three additional business banking lenders who were hired since December 2002. Fifth Third will relocate the team from Southfield to the City of Detroit by no later than December 31, 2004.
- Has advertised in African American targeted media such as the Michigan Chronicle.
- Has acted as the co-chair of the With Ownership Wealth minority homeownership program in Michigan's 13<sup>th</sup> and 14<sup>th</sup> congressional districts, which encompass the City of Detroit.
- Has been one of three lenders in the City of Detroit partnering with the Detroit Housing Commission to provide financing to low and moderate-income families.
- Has been a partner with the Booker T. Washington Business Association in promoting a small business micro-loan

program in the Detroit MSA.

The United States supports Fifth Third's efforts to promote fair lending in the Detroit MSA and agrees that these initial efforts represent positive steps to address issues which are the subject of the United States' complaint. These actions are hereby incorporated by reference in the marketing and outreach plan described below.

#### V. MARKETING, OUTREACH, AND NONDISCRIMINATION

##### **A. Nondiscrimination**

Fifth Third, as successor in interest to Old Kent Financial Corporation and Old Kent Bank, including all of its officers, employees, agents, representatives, assignees and successors in interest, and all of those in active concert or participation with any of them, will conduct its lending in the Detroit MSA in compliance with fair lending laws and will not engage in any act or practice which discriminates on the basis of race or color in any aspect of its small business lending or residential real estate-related transactions, in violation of the Fair Housing Act, 42 U.S.C. §§ 3604 and 3605, and in any aspect of a credit transaction, in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1).

Fifth Third shall adopt the marketing and outreach plan set

forth below in this Settlement Agreement to ensure that its marketing and solicitation of, and processing of applications for, all forms of financing it offers in the City of Detroit provides all persons with an equal opportunity to apply for and obtain credit, regardless of race or color.

**B. Marketing and Outreach Program**

Under this Agreement, Fifth Third shall implement a marketing and outreach program designed to improve its performance in meeting the residential and small business lending needs of residents of the majority-African American City of Detroit. Fifth Third shall use its sound business judgment and best efforts to ensure that its residential and small business loan products are marketed and made available in predominately African American census tracts in the City of Detroit to the same extent that they are marketed and made available in the non-majority African American census tracts within its assessment area.

Nothing in this Agreement requires Fifth Third to make any loan that is inconsistent with appropriate underwriting standards. Rather, this Agreement requires these actions as a remedy for alleged past discrimination by Old Kent and is meant to ensure that persons throughout the Detroit MSA will have an equal opportunity to access and obtain credit, without regard to the racial composition of the area in which they reside or their business or property is located.

The parties agree to confer annually during the term of this Agreement to evaluate Fifth Third's progress in accomplishing the actions set forth below. Fifth Third retains the discretion to take any other actions which it believes are appropriate to achieve these goals without the prior approval of the United States or this Court, except as specifically limited in this Agreement. All provisions in this Agreement are to be implemented in a manner consistent with the safety and soundness of Fifth Third.

Fifth Third's initial plan for achieving its goals is set forth as follows:

1. Additional Branch Locations

Fifth Third shall open three new branches in the City of Detroit during the three year term of this Agreement, subject to obtaining the necessary permits and approvals from local government and the Federal Reserve Board. The location for the first of these branches has been determined and is in the core of the City of Detroit. Fifth Third shall present its evaluation of and preliminary proposal for the second and third new branches to the United States for its review within six months of the entry of this Agreement. Fifth Third shall inform the United States in advance of the precise location of any further new branch offices in the City of Detroit during the term of this Agreement. Fifth Third shall exercise its best efforts to open the first new branch within calendar year 2004.

## **2. Staffing and Training**

As noted at page 10, Fifth Third has hired three additional business lending originators whose job responsibilities are to focus on solicitations and originations of small business lending in the City of Detroit. Fifth Third shall maintain these positions throughout the term of this Decree and shall relocate these positions from Southfield to the City of Detroit by no later than December 31, 2004.

Fifth Third shall provide periodic training to all of its employees and agents with significant involvement in small business and residential real estate-related lending in the Detroit MSA to ensure that their activities are conducted in a non-discriminatory manner. This training shall encompass their fair lending obligations under the FHA, the ECOA, the CRA and this Agreement. Such training shall take place on at least an annual basis, and may be accomplished by lectures, staff meetings, video tapes, regulatory updates, outside speakers or other means. In addition, within 90 days of the entry of this Agreement, Fifth Third shall also provide training for all such employees and agents on the applicable provisions of this Agreement.

## **3. Advertising and Outreach**

Fifth Third shall undertake an advertising program specifically targeted to generate significant additional applications for residential real estate-related credit from

qualified residents and small business loan applications from businesses in the City of Detroit. This advertising program shall include, but is not limited to, print media, radio spots and promotional materials.

Fifth Third shall remain free to determine the size, content, frequency and placement of each of these forms of advertisement. However, all of Fifth Third's print advertising shall continue to contain an equal housing opportunity logo, or equal opportunity logo, slogan or statement as described in the United States Department of Housing and Urban Development's fair housing advertising guidelines formerly published at 24 C.F.R. Part 109, attached hereto as Exhibit A. Fifth Third shall follow the guidelines of Tables I and II of Appendix I in selecting appropriate type size and other standards for advertising. All of Fifth Third's radio and television advertisements shall include the audible statement "Equal Opportunity Lender". Alternatively, if a Fifth Third television commercial includes a written statement appearing on the screen, the nondiscrimination statement may also be so displayed, provided that it appears on the screen as long as any other written statement appears.

#### **4. Consumer Education**

The parties acknowledge that financially educated consumers are an essential component of any sustained increase in Fifth Third's ability to achieve its goals of increased real estate-

related and small business lending in majority African American areas of the City of Detroit. To help identify and develop qualified loan applicants from the City of Detroit, Fifth Third shall fund credit counseling, financial literacy, business planning, and other related educational programs targeted at the residents and small businesses of those areas. During the term of this Agreement, the Bank shall invest a minimum of \$100,000 to implement a comprehensive home-buyer education and counseling program. The Bank shall also invest a minimum of \$100,000 during the term of this Agreement to implement a small business planning and education program targeted to residents and small businesses in the City of Detroit. The consumer education required under this section may, in the Bank's discretion, be provided directly by the Bank and/or through a third party.

**VI. SATISFACTION OF THE UNITED STATES' CLAIMS FOR MONETARY RELIEF**

In addition to the monetary commitments detailed above, Fifth Third shall invest \$3 million over the three year term of this Agreement in the special financing program described below. This investment shall involve funding a special financing program in at least the amounts of \$800,000 in the first year of this Agreement, \$1 million in the second year and \$1.2 million in the third year. Fifth Third may elect to accelerate its investment in the special financing program during the first two years of this Agreement, provided that it contributes at least \$3 million over a three year



period. This investment, when combined with those other financial commitments discussed above, shall satisfy fully the claims of the United States for damages and other monetary relief in this case.

Through this special financing program, Fifth Third shall offer residents and businesses of the City of Detroit loan products at interest rates and/or terms that are more advantageous to the applicant than would normally be provided. Fifth Third shall thereby subsidize each such transaction by one or more of the following means: an interest rate below that which Fifth Third would normally charge, down payment or closing cost grants or assistance, or other financial aid.

Fifth Third retains the discretion whether to subsidize a particular transaction or to offer any one or more, or all, of these forms of financial assistance to qualified applicants on an individual basis as it deems appropriate under the circumstances of a particular applicant. However, Fifth Third shall exercise its discretion in a manner which maximizes the likelihood that it will originate a loan to a qualified applicant, consistent with applicable underwriting guidelines and safety and soundness standards. Fifth Third shall direct at least two-thirds of each year's loan subsidies towards small business loans and the remaining subsidy amount towards real estate-related lending. With respect to the small business loan subsidy program, the loan subsidies shall be capped at 2% of the loan amount, or \$5,000 per

loan, whichever is greater. For purposes of the Order the definition of "small business loan" is defined in accordance with the CRA regulation, 12 C.F.R. 228.12(u).

If for any reason Fifth Third fails to meet the above-described minimum investments in any year, the remaining funds shall be applied to the loan subsidy program for the subsequent year to ensure that a total of \$3 million is allocated over the three-year duration of this Agreement, and that at least two-thirds of the loan subsidy is directed towards small business loans.

No provision of this Agreement, including the loan subsidy program, requires Fifth Third to make any unsafe or unsound loan. During the life of this Agreement, Fifth Third shall assess the effectiveness of this program in achieving its remedial goal and, in its discretion, may recommend to the United States changes to increase its remedial effectiveness.

#### VIII. EVALUATING AND MONITORING COMPLIANCE

For the duration of this Agreement, Fifth Third shall retain all records relating to its obligations thereunder, including its residential real estate-related lending, small business lending, advertising, outreach, branching, special programs and other compliance activities as set forth herein. The United States shall have the right to review and copy such records upon request. This Agreement shall not be interpreted to require Fifth Third to deviate from its ordinary document retention procedures with

respect to its business activities in areas other than those related to its obligations under the Agreement.

Fifth Third shall annually provide to counsel for the United States the data it submits to the Federal Financial Institutions Examination Council ("FFIEC") pursuant to the Home Mortgage Disclosure Act. The data shall be provided in the same format in which it is presented to the FFIEC within thirty days of its submission to the FFIEC each year for the duration of this Agreement.

In addition to the submission of any plans and reports specified above in this Agreement, Fifth Third shall make three annual reports to the United States on its progress fulfilling the goals of this Agreement. Each such report shall provide a complete account of Fifth Third's efforts to comply with each requirement of this Agreement during the previous year, an objective assessment of the extent to which each quantifiable obligation was met, an explanation of why any particular component fell short of meeting its goal for that year, and any recommendations for additional actions to achieve the remedial goals of this Agreement. Fifth Third shall submit these reports within 90 days of the one-year, two-year and three-year anniversary dates of the effective date of this Agreement. In addition, Fifth Third shall attach to the annual reports representative copies of advertising and marketing materials distributed in the City of Detroit.

#### IX. ADMINISTRATION

This Agreement shall be binding on Fifth Third, and any of its officers, employees, agents, representatives, assignees, subsidiaries and successors in interest.

This Agreement shall terminate in three months after the submission of Fifth Third's third annual report to the United States, with no further motion required by the parties. It shall only be extended upon written agreement of the parties or, upon motion of the United States to the Court, for good cause shown.

This Agreement may be modified at any time, upon approval of the Court, by written agreement of Fifth Third and the United States. The parties recognize that there may be changes in relevant and material factual circumstances during the term of this Agreement which may affect the accomplishment of its goals. The parties agree to work cooperatively to discuss any proposed modifications to this Agreement which one or the other reasonably believes will enhance the achievement of its goals.

In the event that any disputes arise concerning the interpretation of or compliance with the terms of this Agreement, the parties shall endeavor in good faith to resolve any such dispute between themselves before bringing it to this Court for resolution. The United States agrees that if it reasonably believes that Fifth Third has violated any provision of this Agreement, it shall provide Fifth Third with written notice thereof and give it

In the event that any disputes arise concerning the interpretation of or compliance with the terms of this Agreement, the parties shall endeavor in good faith to resolve any such dispute between themselves before bringing it to this Court for resolution. The United States agrees that if it reasonably believes that Fifth Third has violated any provision of this Agreement, it shall provide Fifth Third with written notice thereof and give it 30 days to resolve the alleged violation before presenting the matter to the Court.

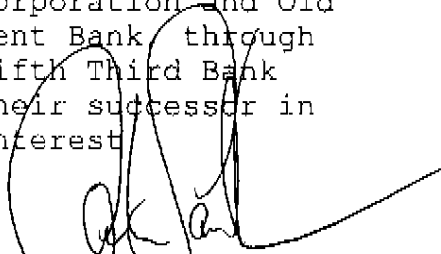
Fifth Third's compliance with the terms of this Agreement shall fully and finally resolve all claims of the United States relating to Old Kent's alleged violation of the fair lending laws by means of redlining on the basis of race or color, including all claims for equitable and monetary damages and penalties.

SO ORDERED, this 19<sup>th</sup> day of May, 2004.

Arthur J. Tarnow  
UNITED STATES DISTRICT JUDGE



The undersigned hereby apply for and consent to the entry of this Agreement:

For Old Kent Financial  
Corporation and Old  
Kent Bank through  
Fifth Third Bank  
their successor in  
interest

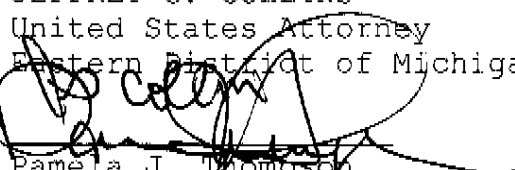
  
\_\_\_\_\_  
Andrew L. Sandler  
Anand S. Raman  
Skadden, Arps, Slate, Meagher  
and Flom, LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005-2111  
Tel: (202) 371-7000  
Fax: (202) 393-5760

For the United States

R. ALEXANDER ACOSTA  
Asst. Attorney General  
Civil Rights Division  
U.S. Department of Justice

  
\_\_\_\_\_  
Steven H. Rosenbaum, Chief  
Timothy J. Moran, Deputy Chief  
Valerie R. O'Brien, Attorney  
Housing and Civil Enforcement  
Section - NWB  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Tel: (202) 514-3510  
Fax: (202) 514-1116  
\_\_\_\_\_  
Rodney D. Martin  
Warner Norcross & Judd LLP  
111 Lyon Street, N.W.  
Grand Rapids, MI 49503-2487  
Tel: (616) 752-2000  
Fax: (616) 752-2500

JEFFREY G. COLLINS  
United States Attorney  
Eastern District of Michigan

  
\_\_\_\_\_  
Pamela J. Thompson  
Executive United States Attorney  
Judith E. Levy  
Assistant United States Atty.  
211 West Fort Street, Ste 2001  
Detroit, Michigan 48226  
Tel: (313) 226-9770  
Fax: (313) 226-4609

A

B

## § 108.50

### § 108.50 Sanctions.

Applicants failing to comply with the requirements of these regulations, the AFHM regulations, or an AFHM plan will make themselves liable to sanctions authorized by law, regulations, agreements, rules, or policies governing the program pursuant to which the application was made, including, but not limited to, denial of further participation in Departmental programs and referral to the Department of Justice for suit by the United States for injunctive or other appropriate relief.

## PART 109—FAIR HOUSING ADVERTISING

### Sec.

#### 109.5 Policy.

#### 109.10 Purpose.

#### 109.15 Definitions.

#### 109.16 Scope.

#### 109.20 Use of words, phrases, sentences, and visual aids.

#### 109.25 Selective use of advertising media or content.

#### 109.30 Fair housing policy and practices.

### APPENDIX

**AUTHORITY:** Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*).

**SOURCE:** 43 FR 57105, Aug. 26, 1980, unless otherwise noted.

#### § 109.5 Policy.

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. The provisions of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) make it unlawful to discriminate in the sale, rental, and financing of housing, and in the provision of brokerage services on account of race, color, religion, sex or national origin. Section 804(c) of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3604(c), as amended, makes it unlawful to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination based on race, color, religion, sex or national origin, or an intention to make such preference, limitation or discrimination.

## Title 24—Housing and Urban Development

### § 109.10 Purpose.

The purpose of these regulations is to assist all advertising media, advertising agencies and all other persons who use advertising to make, print, or publish or cause to be made, printed, or published any advertisement with respect to the sale, rental, or financing of a dwelling, in compliance with the requirements of Title VIII. These regulations also describe the matters this Department will review in evaluating compliance with Title VIII in connection with investigations of complaints alleging discriminatory housing practices involving advertising.

### § 109.15 Definitions.

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity.

(c) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(d) "Family" includes a single individual.

(e) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers, and fiduciaries.

(f) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(g) "Discriminatory housing practice" means an act that is unlawful under sections 804, 805, or 806 of Title VIII of the Civil Rights Act of 1968.

### § 109.16 Scope.

(a) *General.* This part describes the matters the Assistant Secretary will review in evaluating compliance with Title VIII in connection with investigations of complaints alleging discriminatory housing practices involving advertising. Use of these criteria

## Chapter I—Office of Asst. Secy

will be considered by the Assistant Secretary in making determinations to resolve complaints alleging discrimination in advertising.

(1) *Advertising media.* This part provides criteria for use by advertising media in determining whether to accept and publish advertising sales or rental transactions. These criteria will be considered by the Assistant Secretary in making determinations to resolve complaints alleging discrimination in advertising.

(2) *Persons placing advertisements.* A failure by persons placing advertisements to comply with the provisions of this part when found in connection with the investigation of a complaint alleging the making or use of discriminatory advertisements will be a factor in concluding that a violation of section 804 has occurred.

(b) *Affirmative advertising.* Nothing in this part shall be construed to restrict advertising efforts designed to attract persons to dwelling units would not ordinarily be expected to apply when such efforts are put to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

### § 109.20 Use of words, phrases, sentences, and visual aids.

The following words, phrases, symbols, and forms typify those often used in residential real estate advertising to convey either overt or tacit discriminatory intent. They should, therefore, be avoided in order to eliminate their discriminatory effect. In considering a complaint under Title VIII, the Assistant Secretary will normally consider these and comparable words, phrases, symbols, and forms to indicate a possible violation of the Title and to establish a need for seeking resolution of the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the Title is likely to result.

(a) *Words descriptive of dwelling.* White home, Colored home, Jewish home, Hispanic residence.



purpose of these regulations is to regulate all advertising media, advertising agencies and all other persons who use advertising to make, print, or publish any advertisement with respect to the sale, rental, or financing of dwelling. In compliance with the requirements of Title VIII. These regulations also describe the matters this Department will review in evaluating complaints with Title VIII in connection with investigations of complaints alleging discriminatory housing practices involving advertising.

#### Definitions.

"Secretary" means the Secretary of Housing and Urban Development. "Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity.

"Dwelling" means any building, structure, or portion thereof which is used as, or designed or intended to be used as, a residence by one or more families, and any vacant land is offered for sale or lease for construction or location thereon of such building, structure, or portion thereof.

"Family" includes a single indi-

"Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal entities, mutual companies, stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers, and fiduciaries. "To rent" includes to lease, to let, to let and otherwise to grant consideration the right to occupy as not owned by the occupant. "Discriminatory housing practices" means an act that is unlawful under sections 804, 805, or 806 of Title VIII of the Civil Rights Act of 1968.

#### Scope.

**General.** This part describes the matters the Assistant Secretary will review in evaluating compliance with Title VIII in connection with investigations of complaints alleging discriminatory housing practices involving advertising. Use of these criteria

will be considered by the Assistant Secretary in making determinations to resolve complaints alleging discrimination in advertising.

(1) **Advertising media.** This part provides criteria for use by advertising media in determining whether to accept and publish advertising regarding sales or rental transactions. Use of these criteria will be considered by the Assistant Secretary in making determinations to resolve complaints alleging discrimination in advertising.

(2) **Persons placing advertisements.** A failure by persons placing advertisements to comply with the provisions in this part when found in connection with the investigation of a complaint alleging the making or use of discriminatory advertisements will be a basis for concluding that a violation of section 804 has occurred.

(b) **Affirmative advertising efforts.** Nothing in this part shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

#### § 109.20 Use of words, phrases, sentences, and visual aids.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory intent. Their use should, therefore, be avoided in order to eliminate their discriminatory effect. In considering a complaint under Title VIII, the Assistant Secretary will normally consider the use of these and comparable words, phrases, symbols, and forms to indicate a possible violation of the Title and to establish a need for seeking resolution of the complaint. If it is apparent from the context of the usage that discrimination within the meaning of the Title is likely to result.

(a) **Words descriptive of dwelling, landlord, and tenant.** White private home, Colored home, Jewish home, Hispanic residence.

(b) **Words indicative of race, color, religion, sex or national origin.**

(1) **Race**—Negro, Black, Caucasian, Oriental, American Indian.

(2) **Color**—White, Black, Colored.

(3) **Religion**—Protestant, Christian, Catholic, Jew.

(4) **National origin**—Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.

(5) **Sex**—the exclusive use of words in advertisements including those involving the rental of separate units in a single or multi-family dwelling stating or tending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this section shall restrict advertisements of dwellings used exclusively for dormitory facilities by educational institutions.

(6) **Catch words**—Words such as restricted, ghetto, and disadvantaged should be avoided. Also, words and phrases used in a discriminatory context should be avoided, e.g., "private", "integrated", "traditional", "board approval" or "membership approval".

(c) **Symbols or logotypes.** Symbols or logotypes which imply or suggest race, color, religion, sex, or national origin.

(d) **Colloquialisms.** Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, or national origin.

(e) **Directions to real estate for sale or rent (use of maps or written instructions).** Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its inclusion of minorities (signal to whites) should not be used. Specific directions which make reference to a racial or national origin significant area may indicate a preference and should not be used. References to a synagogue, congregation or parish may also indicate a religious preference and should not be used.

## § 109.25

## Title 24—Housing and Urban Development

(f) *Area (location) description.* Names of facilities which cater to a particular racial, national origin or religious group such as country club or private school designations, or names of facilities which are used exclusively by one sex, should not be used to describe an area.

### § 109.25 Selective use of advertising media or content.

The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of Title VIII. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are additional examples of the selective use of advertising which may be discriminatory:

(a) *Selective geographic advertisements.* Such selective use may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in selected sales offices.

(b) *Selective use of equal opportunity slogan or logo.* When placing advertisements, such selective use may involve placing the equal housing opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.

(c) *Selective use of human models when conducting an advertising campaign.* Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a

complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others. Similar care must be exercised in advertising in publications or other media directed at one particular sex. Such selective advertising may involve the use of human models of members of only one sex in displays, photographs or drawings to indicate preferences for one sex or the other.

### § 109.30 Fair housing policy and practices.

In the investigation of complaints, the Assistant Secretary will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under Title VIII.

(a) *Use of Equal Housing Opportunity logotype, statement, or slogan.* All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, or national origin. The choice of logotype, statement or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Table I (see appendix) indicates suggested use of the logotype, statement, or slogan and size of logotype. Table II (see appendix) contains copies of the suggested Equal Housing Opportunity logotype, statement and slogan.

(b) *Use of human models.* Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness on the basis of race, color, religion, sex, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area and both sexes. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, reli-

## Chapter I—Office of Asst. S

gion, sex, or national origin, for the exclusive use of group.

(c) *Coverage of local law.* If the Equal Housing Opportunity is used, the advertiser also include a statement regarding coverage of any local fair housing ordinance regarding discrimination in the sale, rental or financing of dwellings.

(d) *Notification of fair policy—(1) Employees.* All of advertisements, advertisers, and firms engaged in rental or financing of real estate should provide a printed copy of nondiscriminatory policy to employee and officer.

(2) *Clients.* All publishers of advertisements and advertising agencies should post a copy of the nondiscrimination policy in a conspicuous place wherever persons are advertising and should have copies for all firms and persons using advertising services.

(3) *Publishers' notice.* All publishers should publish at the beginning of each real estate advertising section such as that appearing in (see appendix). The notice should contain a statement regarding the local fair housing or human rights ordinance regarding discrimination in the sale, rental or financing of dwellings.

## APPENDIX

The following three tables may be used as a guide for the use of the Equal Housing Opportunity logotype, statement, or publisher's notice for advertising.

### Table I

A simple formula can guide the advertiser in using the Equal Housing Opportunity logotype, statement, or

In all space advertising (advertisements in newspapers, magazines, etc.) the following standards should be used:

entary advertising campaign is directed at other groups. An example may involve use of racial mixed models by a developer to raise one development and not others. Similar care must be exercised in advertising in publications or other media directed at one particular sex. Selective advertising may involve use of human models of members of only one sex in displays, photographs or drawings to indicate preference for one sex or the other.

### 30 Fair housing policy and practices.

The investigation of complaints, Assistant Secretary will consider implementation of fair housing policies and practices provided in this section as evidence of compliance with prohibitions against discrimination in advertising under Title VIII.

**Use of Equal Housing Opportunity logotype, statement, or slogan.** All advertising of residential real estate sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, or national origin. The type of logotype, statement or slogan will depend on the type of media used (visual or auditory) and, in the advertising, on the size of the advertisement. Table I (see appendix) states suggested use of the logotype, statement, or slogan and size of type. Table II (see appendix) contains copies of the suggested Equal Housing Opportunity logotype, statement and slogan.

**Use of human models.** Human models in photographs, drawings, or graphic techniques may not be used to indicate exclusiveness on the basis of race, color, religion, sex, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as equally representing majority and minority groups in the metropolitan area and both sexes. Models, if used, should portray persons in an equal setting and indicate to the general public that the housing is open to all without regard to race, color, religion,

sex, or national origin, and is not for the exclusive use of one such group.

(c) **Coverage of local laws.** Where the Equal Housing Opportunity statement is used, the advertisement may also include a statement regarding the coverage of any local fair housing or human rights ordinance regarding discrimination in the sale, rental or financing of dwellings.

(d) **Notification of fair housing policy—(1) Employees.** All publishers of advertisements, advertising agencies, and firms engaged in the sale, rental or financing of real estate should provide a printed copy of their nondiscriminatory policy to each employee and officer.

(2) **Clients.** All publishers of advertisements and advertising agencies should post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising and should have copies available for all firms and persons using their advertising services.

(3) **Publishers' notice.** All publishers should publish at the beginning of the real estate advertising section a notice such as that appearing in Table III (see appendix). The notice can include a statement regarding the coverage of any local fair housing or human rights ordinance regarding discrimination in the sale, rental or financing of dwellings.

## APPENDIX

The following three tables may serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, and publisher's notice for advertising:

Table I

A simple formula can guide the real estate advertiser in using the Equal Housing Opportunity logotype, statement, or slogan.

In all space advertising (advertising in regularly printed media such as newspapers or magazines) the following standards should be used:

Size of advertisement	Size of logotype in inches
1/2 page or larger	2 x 2
1/4 page up to 1/2 page	1 x 1
1/8 column inches to 1/4 page	1/2 x 1/2
Less than 1/8 column inches	(1)

(1) Do not use

In any other advertisements, if other logotypes are used in the advertisement, then the Equal Housing Opportunity logo should be of a size at least equal to the largest of the other logotypes; if no other logotypes are used, then the type should be bold display face which is clearly visible. Alternatively, when no other logotypes are used, 3 to 5 percent of an advertisement may be devoted to a statement of the equal housing opportunity policy.

In space advertising which is less than 4 column inches (one column 4 inches long or two columns 2 inches long) of a page in size the Equal Housing Opportunity slogan should be used. Such advertisements may be grouped with other advertisements under a caption which state that the housing is available to all without regard to race, color, religion, sex or national origin.

Table II

Illustrations of Logotype, Statement, and Slogan Equal Housing Logotype:



**Equal Housing Opportunity Statement:**  
We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing pro-

## § 110.1

gram in which there are no barriers to obtaining housing because of race, color, religion, sex, or national origin.

Equal Housing Opportunity Slogan:  
"Equal Housing Opportunity."

### Table III

Illustration of Media Notice—Publisher's notice: All real estate advertised herein is subject to the Federal Fair Housing Act of 1968 which makes it illegal to advertise "any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or intention to make any such preferences, limitation, or discrimination."

We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis.

## PART 110—FAIR HOUSING POSTER

### Subpart A—Purpose and Definitions

Sec.

110.1 Purpose.

110.5 Definitions.

### Subpart B—Requirements for Display of Posters

110.10 Persons subject.

110.15 Location of posters.

110.20 Availability of posters.

110.25 Description of posters.

### Subpart C—Enforcement

110.30 Effect of failure to display poster.

**AUTHORITY:** Sec. 7(d) of the Department of Housing and Urban Development Act of 1965 (42 U.S.C. 3535(d)).

**SOURCE:** 37 FR 3429, Feb. 16, 1972, unless otherwise noted.

### Subpart A—Purpose and Definitions

#### § 110.1 Purpose.

The regulations set forth in this part contain the procedures established by the Secretary of Housing and Urban Development with respect to the display of a fair housing poster by persons subject to sections 804 through 806 of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3604-3606.

(40 FR 20079, May 8, 1975)

## Title 24—Housing and Urban Development

### § 110.5 Definitions.

(a) "Department" means the Department of Housing and Urban Development.

(b) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, or 806 of Title VIII.

(c) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(d) "Family" includes a single individual.

(e) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

(f) "Secretary" means the Secretary of Housing and Urban Development.

(g) "Fair housing poster" means the poster prescribed by the Secretary for display by persons subject to sections 804-806 of the Civil Rights Act of 1968, as amended.

(h) "The Act" means Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601 et seq.

(i) "Person in the business of selling or renting dwellings" means a person as defined in section 803(c) of the Act.

(37 FR 3429, Feb. 16, 1972, as amended at 40 FR 20079, May 8, 1975)

### Subpart B—Requirements for Display of Posters

#### § 110.10 Persons subject.

(a) Except to the extent that paragraph (b) of this section applies, all persons subject to section 804 of the Act, Discrimination in the Sale or Rental of Housing, shall post and maintain a fair housing poster as follows:

(1) With respect to a single-family dwelling (not being offered for sale or rental in conjunction with the sale or

## Chapter I—Office of Asst. Secy

rental of other dwellings) offered for sale or rental through a real broker, agent, salesman, or person in the business of selling or renting dwellings, such person shall post and maintain a fair housing poster in each place of business where the dwelling is offered for sale or rental.

(2) With respect to all other dwellings covered by the Act:

(i) A fair housing poster shall be posted and maintained at any place of business where the dwelling is offered for sale or rental, and

(ii) A fair housing poster shall be posted and maintained at the dwelling except that with respect to a family dwelling being offered for sale or rental in conjunction with the sale or rental of other dwellings, a fair housing poster may be posted and maintained at the model dwelling instead of at each of the dwellings.

(3) With respect to those dwellings to which paragraph (a)(2) of this section applies, the fair housing poster must be posted at the beginning of construction and maintained throughout the period of construction or rental.

(b) This part shall not require posting and maintaining a fair housing poster:

(1) On vacant land, or

(2) At any single-family dwelling unless such dwelling

(i) Is being offered for sale in conjunction with the sale of other dwellings in which instances a fair housing poster is posted and maintained as specified in paragraph (a)(2)(ii) of this section.

(ii) Is being offered for sale through a real estate broker, salesman, or person in the business of selling or renting dwellings, in circumstances a fair housing poster shall be posted and maintained as specified in paragraph (a)(1) of this section.

(c) All persons subject to section 804 of the Act, Discrimination in the Financing of Housing, shall post and maintain a fair housing poster in each place of business where they participate in the financing of housing.

(d) All persons subject to section 805 of the Act, Discrimination in